

**BOARD OF APPEALS  
for  
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

**Case No. A-5892**

**PETITION OF PAUL AND DEBORAH VERGARA**

(Hearing held July 9, 2003)

(Worksession held July 23, 2003)

**OPINION OF THE BOARD**

(Effective date of Opinion, October 17, 2003)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-.323(b)(2). The petitioners' original request was for a variance of six (6) feet as the proposed second-story addition was within fourteen (14) feet of the rear lot line. The request was amended for a variance of four (4) feet as the proposed second-story addition is within sixteen (16) feet of the rear lot line. The required setback is twenty (20) feet.

The subject property is Lot 13, Block 3B, Hillmead-Bradley Hills Subdivision, located at 8604 Melwood Road, Bethesda, Maryland, 20817, in the R-60 Zone (Tax Account No. 00594906).

Decision of the Board: Requested variance of six (6) feet **denied**.  
Requested variance of four (4) feet **granted**.

**EVIDENCE PRESENTED TO THE BOARD**

1. The petitioners propose to construct second-story addition to the existing single-story dwelling.
2. The petitioners testified that their property is an irregularly shaped lot that is wider than it is deep with an angled rear lot line. See, Exhibit No. 4. The petitioners testified that they received a prior variance to construct an addition to the rear of the residence.
3. The petitioners testified that the existing dwelling is currently located in the rear yard setback and that the proposed construction, as revised, will not expand the footprint of the existing structure. The petitioners testified that the property's rear yard boundary is heavily treed.
4. The request for a variance of six feet was denied at the public hearing held on July 9, 2003. The petitioners requested reconsideration at the Board's July 23, 2003 Worksession and a variance of four feet was granted. Revised

construction plans [Exhibit Nos. 15(a) through 15(g)] and a revised building permit [Exhibit No. 16] were entered into the record.

### **FINDINGS OF THE BOARD**

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The existing single-family dwelling is currently located in the rear yard setback. The proposed construction of a second-story addition will be built onto the footprint of the existing single-story dwelling and will not expand the footprint of the existing structure. The Board finds that these are exceptional circumstances and that the strict application of the regulations would result in practical difficulties for the property owners.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variance request for the construction of a second-story addition is the minimum reasonably necessary.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction will continue the residential use of the property and the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The proposed addition will not bring the residence closer to the neighboring and adjoining properties and the Board finds that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the revised variance request of four (4) feet from the required twenty (20) foot rear lot line setback for the construction of a second-story addition is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.

2. Construction must be completed according to plans entered in the record as Exhibit Nos. 15(a) through 15(g) and 16.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Allison Ishihara Fultz, with Louise L. Mayer, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 17th day of October, 2003.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.